

March 30, 2004
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IN THE SUPREME COURT OF THE STATE OF IDAHO

2004 Opinion No. 32

IDAHO POWER COMPANY,)
)
Applicant-Appellant,)
)
v.)
)
IDAHO PUBLIC UTILITIES)
COMMISSION,)
)
Respondent.)
_____)

Docket No. 29016

Appeal from the Idaho Public Utilities Commission of the State of Idaho,
Commissioner Paul Kjellander presiding.

The Order of the Commission is vacated and remanded.

Larry D. Ripley, Boise, for appellant. Larry D. Ripley argued.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for respondent. John
R. Hammond Jr. argued.

This case came to the Idaho Supreme Court from the Idaho Public Utilities Commission's (Commission) final order denying Idaho Power the recovery of lost revenue resulting from its Irrigation Buy-Back Program (Program), a program designed to encourage Idaho Power's large irrigation customers to reduce their energy consumption during the 2001 growing season.

In February 2001, Idaho Power applied to the Commission for approval of the Program, which was to be implemented during the 2001 growing season. Idaho Power sought approval for the Program because of the low streamflows in the Snake River and the high cost of electricity in the Western United States' energy market during 2001.

The Commission approved the Program and instructed Idaho Power to submit another application at the end of the growing season, listing the costs and lost revenue resulting from the Program. At the end of the 2001 growing season Idaho Power

submitted the required application, listing the direct costs and lost revenues incurred as a result of the Program.

The Commission allowed Idaho Power to recover the direct costs of the Program. However, the Commission denied Idaho Power's request to recover its lost revenue from the Program. Idaho Power asked the Commission for a review of the decision denying the recovery of lost revenue. On review, the Commission affirmed its earlier decision, again denying the recovery of lost revenue.

Idaho Power appealed to this Court for a determination as to whether the Commission's decision denying Idaho Power's request to recover its lost revenue from the Program was supported by the evidence. This Court vacates and remands the Order of the Commission denying Idaho Power recovery of lost revenue because a reasonable reading of Commission Order 28699 is that lost revenue would be included in the PCA. The PUC's authority to require DSM programs is a broad public policy issue and beyond the scope of issues raised on appeal. Costs to Appellants.